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Subject:—

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Opinions under the

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File No. O.I.P.C/41

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KSR.
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24th April 1956

The book is not written in a spirit or fair and reasonable criticism. It contains several objectionable passages in which the author by making scandalous allegations tries to show that the tenets and practices of the ~~followers~~ followers of the Tara Panthi sect of Jains are not only opposed to those of Jainism, but are also immoral and indecent. There is a clear attempt in the book to insult the religious beliefs of the followers of the Tara Panthi sect. The book is also likely to create hatred among Jains proper towards the followers of the Tara Panthi sect. Action can therefore be taken in this case under section 295A and section 153A, Indian penal Code. The book will also fall under clause (b) of section 4(1) of the Indian Press (Emergency Powers) Act.

Id. P.N.M 29/5

Remembrance of Legal Affairs.

Contd.

U.R. to H.D. (Political) No. 4974 dated the 30th May 1941.

Office of the R.L.A.

Even assuming that the statement contained in the Memorandum at pages 17-18 ante that the President got his private dues as moneylender deducted from the municipal servants' ~~provident~~ provident fund amount without the consen t of the servantis untrue and that the statement might reasonably be understood by those who read it and who know Mr. Oka to refer to him, no action can lie in a court of law, either civil or criminal, for defamation in respect of the statement. The statement is contained in a Memorandum issued under the direction of the Government of Bombay to the Municipal Commissioner for the City of Bombay and the Commissioners of Divisions, with a view to amending the Municipal Acts and the Bombay Local Boards Act so as to disqualify persons who have moneylending transactions with the employees of the local bodies from being members of such bodies in the interest of purity of the local administration in the province. The person making the statement had an interest in making the communication to the persons to whom it was made and the latter had a corresponding interest in in receiving it. The communication was made to persons in public position for the public good. The communication was, therefore, on a privileged occasion and no ~~mmx~~ action for damages can lie in respect of it (Ratanlal's Law of Crimes, 11th Edn. pages 171-172.) No prosecution can also lie in respect of the statement as it was made purely for the public good and is saved by the ninth exception to section 499 of the Indian Penal Code.

I of P.N.M. 1/11

Remembrancer of legal affairs.

U.R. to C.D., No. 9541, dated 5th November 1941

J.C.
21st April 1966.

Office of the R.L.A.

The material facts of this case are as follows:- In April last the Secy. Public Service Commission, Bombay, invited applications for the post of the Assistant Labour Officer, Bombay. One of the conditions of the recruitment was that the direct recruitee should not be more than 26 years of age on 10th May 1940. The applicants were required to supply full details in the printed prescribed form of application. Mr. R.S. Kamat was one of the candidates for the post and he submitted his application in the printed form duly filled in and accompanied by copies of necessary testimonials. Relying on the statements made in the application and the copies of testimonials without verifying the correctness thereof from the originals the Public Service Commission recommended Mr. Kamat for appointment. Government accepted the recommendation and appointed Mr. Kamat as the Assistant Labour Officer, Bombay at the end of July. It has now transpired that certain statments made in the application were not true and that the copies of certificates and the testimonials annexed to the application in support of such statements were false. Mr. Kamat has failed to produce the original certificates and testimonials though called upon to do so. The following are the false statements made by him in his application to the Public Service Commission:-

(a) that his birth date was 27th August 1918 (when as a matter of fact it was 27th August 1914);

(b) that he passed his B.A. examination with first class honours (when as a matter of fact he graduated only in the pass class); and

(c) that he had not been a candidate for any post or service previously advertised by the Commission (though as a matter of fact he had applied for posts twice before).

In support of the aforesaid false statements (a) and (b) Mr. Kamat produced the following ~~statement~~ copies written

in his own hand, viz. (1) a copy of the certificate of the chief Presidency Magistrate reciting "27th day of August 1918" instead of 27th day of ugust 1914 as his birth day and (2) a copy of the University certificate containing the interpolation "with first class honours".

2. The question referred to the R.L.A. for consideration is whether on these facts Mr. Kamat can be sucessfully prosecuted for any offence.

3. The relevant provisions under which a prosecution can be considered in this case are sections 417, 465 and 471 of the Indian Penal Code. Section 417 makes it an offence to cheat. Under section 415 whoever, by deceiving any person, intentionally induces the person so deceived to do anything which he would not do if he were not so deceived, and which act causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat. Under the explanation to the section, a dishonest concealment of facts is a deception with in the meaning of the section. There is no doubt in this case that Mr. Kamat by his false representations and false copies of the certificates deceived the members of the Public Service Commission. By deceiving them he induced them intentionally to recommend his name to Government for appointment to the post for which he was a candidate, which act they would not have done if they were not so deceived. The only question is whether this act has caused harm to the mind and reputation of the members. In Emperor v. Fazal Din, 4 Criminal Law Journal Reports, p.365, where a candidate had sent an application for employment on the Burma Railways to the Locomotive and Carriage Superintendent of those Railways with a false certificate of previous employment and good character, the lahore Chief held that the accused was liable for cheating under section 415, Indian Penal Code. At page 366 of the Report, Reid J. observes that the injury specified in section 415 of the Penal Code is as comprehensive as words can make it. The public Service Commission is a body

constituted for making recommendations to Government for responsible posts. The commission is expected to make the recommendations after careful consideration of the merits and qualifications etc. of each candidate. The appointments are made by Government onthe recommendation of the Commissioner It has transpired that the recomendation in this case was not proper. The Commission relying on the statements of Mr. Kamat contained in his application and copies of certificates, failed to call for the originals and verify the contents. The act no doubt must have caused or was such as was likely to cause harm to the members in their mind and reputation. It appears that in an unreported case, Criminal Application for Revision, No. 402 of 1962, regarding one Kashinath Mahadev Phatak, where the accused had applied to the postal authorities and obtained an appointment inthe Postal Department without mentioning in his application that he was previously deamissed from Government service, the High Court of Bombay held that there was no offence committed as neither the act of appointment nor the omission to inquire into a potitioner's anbecedents caused or was likely to cause damage or harm "to the body, mind, repitation or property" of the person deceived (see p. 1057, Ratnlal's Law of Crimes, 15th Edition). This case is distinguishable from the present case, in that the act under consideration in that case was the act of appointment which according to the High Court did not likely to cause any damage or harm to the authorities in the body, mind, reputation or property. In this case the act of recommendation made by the Public Service Commission which for reasons stated ablve must have caused or must be held to have been likely to cause harm to the members of the Commission w in mind and reputation as it was liable to discredit them in the eyes of Government. I am therefore of opinion that a sufficent prima facie case has been made out for prosecuting Mr. Kamat for an offence under section 415 of the Indian Penal Code.

S-C.
21st April 1966.

4. As regards offences under section 465 or 471 if the Indian Penal Code, there is no evidence in this case to prove forgery and no prosecution can lie against Mr. Kamat under these sections. Mr. Kamat produced only copies of the original certificates. It is true that the copies were false copies but his act in makingthese copies does not fall under any of the clauses of section 464, Indian Penal Code which defines the making making of a false document. He has not made, signed, sealed or executed the copies with the intention of causing it to be believed that xk they were made, signed, sealed or executed by or by the authority of a person by whom or by whose authority they were not made, signed, sealed or executed. Consequently they are not covered by the first clause of the section. Mr. Kamat has not altered any document after it has been made or executed and his act of making the copies does not fall under the second xkxxxxx clause of the section. He has not obviously caused xxx any person to sign, seal, execute or alter a document within the meaning of the third clause of the section. No charge can, therefore, lie against him for forgery or for xi using a forged document (see Emperor vs. Fazal Din, 4 Criminal Law Journal Reports, page 358.)

Ld. P.N.M. 17/10

Remembrancer of Legal Affairs,

U.R. to P.& S.D. No. 271-p-confl. dated the 17th October 1941.

S.C.
24th April 1956

Office of the R.L.A.

No sanction of Government under section 197, Criminal Precedure Code, would be necessary in the present case as Mr. Kamat was not a public servant when he committed the [illegible].

Ld. P.N.M. 30/10

Remembrancer of Legal Affairs.

U/R. to P.& S.D. No. 286 -P-Confl., dated the 31st October 1941.

Office of the R.L.A.

There is no objection to directing the Public Prosecutor for Bombay to prosecute Mr. Kamat under section 182, Indian Penal Code also. Attention is ~~xxxx~~ invited to paragraph 6 of the Public Prosecutor's letter dated 3-12-41.

Id. P.N.M

Remembrancer of legal Affairs.

U.R. to P.& S.D. No. 10806, dated the 15th December 1941.

P. & S.D.

please see G.R. No. 4188-34 confl. dated the 4-11-1941. As the R.L.A has no objection to the prosecution of Mr. Kamat under section 182, I.P.C. the necessary erratum is put up on the linked file. These papers may be returned to the R.L.A.

Id. 17/12/41

Id

18/12

C.S. Id.

U.O.R. to the R.L.A. dated 22nd Dec. 1941.

S.C.
24th April 1956.